

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MIKE KREIDLER,
Plaintiff,
v.
DANNY L. PIXLER, *et al.*
Defendants.

Case No. C06-0697RSL

ORDER GRANTING IN PART AND
DENYING IN PART PIXLER'S
MOTION *IN LIMINE*

This matter comes before the Court on defendant Danny Pixler’s motion *in limine* to preclude the introduction of certain evidence and testimony. Specifically, he seeks to preclude introduction of (1) any reference to offers to settle or compromise under Federal Rule of Evidence 408; (2) any argument that Pixler “obtained, converted, stole, or in any way came into possession of any money” that was owed to Cascade; (3) any argument or inferences at trial based on the fact that defendant will not appear or testify on his own behalf; (4) any reference to defendant’s assets or financial ability to pay a judgment; (5) any reference by counsel concerning their personal beliefs as to their client’s credibility; and (6) the fact that this motion has been filed. Plaintiff does not object to the fifth and sixth items, so any such references are prohibited. At the parties’ request, the Court heard

ORDER GRANTING IN PART AND DENYING
IN PART PIXLER'S MOTION *IN LIMINE* - 1

1 oral argument in this matter on April 12, 2010.

2 **A. Conviction-Related Evidence.**

3 Plaintiff does not plan to offer any offers of settlement or compromise from this
4 case, and he would be precluded from doing so under Federal Rule of Evidence 408.
5 Rather, plaintiff may seek to introduce a “Litigation Release” from the Securities and
6 Exchange Commission (“SEC”) titled, “Court Enters Final Judgment of Permanent
7 Injunction and Other Relief Against Defendant Danny L. Pixler.” Declaration of Diana
8 Dearmin (Dkt. #222), Ex. 1. The admissibility of the Litigation Release turns on the
9 admissibility of Pixler’s guilty plea, which is the subject of a separate motion. Similarly,
10 Pixler seeks to exclude references about his absence at trial. The Court will address those
11 issues in connection with Pixler’s motion *in limine* regarding his criminal conviction.

12 **B. Financial Allegations.**

13 Pixler seeks to exclude as irrelevant allegations that he obtained money to which
14 he was not entitled. Those allegations, however, are directly relevant to plaintiff’s
15 primary contention in this case: that all of the defendants, including Pixler, wrongfully
16 took and/or diverted workers’ compensation premiums due to Cascade. Although Pixler
17 argues that there is a lack of evidence to support that claim against him, the issue of the
18 merits is separate from the issue of relevance. Moreover, the Court denied defendants’
19 motion for summary judgment on plaintiff’s claims of misappropriation, conversion, theft
20 of premiums, unjust enrichment, violations of the Criminal Profiteering Act, and civil
21 conspiracy. The allegations are relevant to those claims, and plaintiff is entitled to
22 attempt to prove them at trial. Accordingly, the Court will not exclude allegations on this
23 topic.

24 Pixler also seeks to exclude under Rule 403 evidence regarding his assets and

1 ability to pay a judgment. Although Pixler claims that the information is prejudicial, he
2 does not explain why. For that reason, the Court will focus on the relevancy issue as the
3 parties did. Plaintiff counters that it does not intend to present any evidence to establish
4 Pixler's ability to pay a judgment. Rather, it plans to introduce the Statement of Net
5 Worth Pixler submitted to insurance regulators in support of the Cascade transaction.
6 Plaintiff contends, and the Court agrees, that the statement is relevant to whether Pixler
7 presented truthful information to regulators, which is relevant to plaintiff's claims of civil
8 conspiracy and violations of the Consumer Protection Act and Criminal Profiteering Act.
9 It is also relevant to Pixler's credibility. Furthermore, any evidence that Pixler or his wife
10 received funds diverted from Cascade is relevant to the theft and conspiracy-related
11 claims. The probative value of the information outweighs any vague assertion of
12 prejudice.

13 For all of the foregoing reasons, Pixler's motion *in limine* (Dkt. #221) is

1 GRANTED IN PART AND DENIED IN PART.¹
2

3 DATED this 15th day of April, 2010.
4

5
6 
7 Robert S. Lasnik
United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20

21 ¹ The Court notes that the findings and conclusions in this order, like all rulings *in*
22 *limine*, are preliminary and can be revisited at trial based on the facts and evidence as
23 they are actually presented. See, e.g., Luce v. United States, 469 U.S. 38, 41 (1984)
24 (explaining that a ruling *in limine* “is subject to change when the case unfolds,
25 particularly if the actual testimony differs from what was contained in the proffer. Indeed
even if nothing unexpected happens at trial, the district judge is free, in the exercise of
sound judicial discretion, to alter a previous *in limine* ruling.”). Subject to these
principles, the Court issues this ruling for the guidance of the parties.